

Civil Action No. 04-10468-GAO

Defendants.

3693780v1

Plaintiff also maintains, apparently, that Ms. Russo is in default because she did not file her waiver of service in a timely manner and, therefore, was required to respond to his complaint within 20 days of receiving the waiver of service. Plaintiff is mistaken. First, as Plaintiff has previously acknowledged, Ms. Russo's waiver of service was sent to him on April 2, 2004. This was in accordance with both the waiver of service he provided, which instructed the recipient to return the waiver to him to be filed, and Federal Rules of Civil Procedure 4(d)(4), which states that "[w]hen the *plaintiff* files a waiver of service with the court, the action shall proceed . . . as if a summons and complaint had been served at the time of filing the waiver." (emphasis supplied). Thus, it is Plaintiff's obligation to file Ms. Russo's waiver of service with the Court. To date, Plaintiff has not done so.

Moreover, Ms. Russo did return her waiver of service in a timely manner. Rule 4(d)(2)(F) provides that a defendant must be allowed a "reasonable time to return the waiver, which shall be at least 30 days from the date on which the request was sent." Plaintiff sent his waiver to Ms. Russo on March 10, 2004. Ms. Russo returned it on April 2, 2004, well within the minimum time period for response under the rules. Finally, even if the waiver of service was not returned in a timely manner, Plaintiff has yet to serve Ms. Russo. Accordingly, the time for Ms. Russo to respond has not expired.

Respectfully submitted,

PATRICIA RUSSO

By her attorneys,



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Dated: May 12, 2004

Certification of Conference

Pursuant to Local Rule 7.1(A)(2), I, Lisa M. Gaulin, hereby certify that I have made a good-faith effort to confer on this issue with the *pro se* Plaintiff prior to filing this motion by speaking with Plaintiff and asking him to withdraw his requests for sanctions/default. We were unable to resolve the issue.



Lisa M. Gaulin

I HEREBY CERTIFY THAT A TRUE COPY OF
THE ABOVE DOCUMENT WAS SERVED
UPON THE ATTORNEY OF RECORD FOR
EACH OTHER PARTY BY MAIL/HAND ON

DATE 5-12-04 SIGNATURE 